

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009SF1667
)	EEOC NO.: 21BA90574
CAROLYN BOTTOMS-CISSELL)	ALS NO.: 09-0634
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon Carolyn Bottoms-Cissell's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2009SF1667; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF JURISDICTION

In support of which determination the Commission states the following findings of fact and reasons:

1. On November 28, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged in her charge that Mac-A-Tac ("the Company") subjected her to harassment because of her sex, female (Count A), and discharged her because of her sex, female (Count B), and in retaliation for having opposed unlawful discrimination (Count C), in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act"). On September 23, 2009, the Respondent dismissed Counts A & B for Lack of Jurisdiction and Count C for Lack of Substantial Evidence. On October 26, 2009, the Petitioner timely filed her Request.
2. The Petitioner was employed by the Company as an Over the Road Truck Driver. The Petitioner alleged in her charge that from 2005 through July 20, 2008, the Company's owner repeatedly made derogatory comments about women. On July 21, 2008, the Petitioner opposed unlawful discrimination when she complained to the Company's owner about his derogatory comments about women.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

3. On July 21, 2008, the Company discharged the Petitioner. The Company stated it discharged the Petitioner because she had damaged a truck on July 20, 2008, and the Petitioner had previously damaged the Company's trucks, including one brand new truck.
4. Section 2-101(B)(1)(a) of the Act defines an "employer" as any person who employed 15 or more employees within Illinois during 20 or more calendar weeks within the calendar year of or preceding the alleged violation. See 775 ILCS § 5/2-101(B)(1)(a).
5. After the Petitioner had filed her charge of discrimination against the Company, the Respondent determined that the Company had not employed the requisite number of employees during the relevant time period, as set out in § 2-101(B)(1)(a) of the Act; therefore, the Respondent determined the Company was not an "employer" within the meaning of the Act. For that reason, the Respondent dismissed Counts A & B of the charge for lack of jurisdiction.
6. As to Count C, the Respondent initially dismissed this count based on its determination there was no substantial evidence of retaliation. Rather, the Respondent determined the Petitioner had in fact informed the Company on July 20, 2008, that her truck was in need of repair. Further, the Respondent determined that the Company's rules stated that damage to its equipment could affect the job status of its drivers. The Respondent initially determined that there was no substantial evidence the Company's stated reason for discharging the Petitioner was a pretext for retaliation.
7. In her Request, the Petitioner argues the Company did not discharge her because she damaged its equipment. Rather the Petitioner states she was terminated the same day she complained to the Company's owner about his derogatory comments about women.
8. In its response, the Respondent asks the Commission to sustain its dismissal of Counts A & B of the Petitioner's charge for lack of jurisdiction based on its original determination that the Company was not an "employer" within the meaning of the Act. However, the Respondent now asks the Commission to vacate the dismissal of Count C and enter a finding of substantial evidence as to Count C of the Petitioner's charge.

CONCLUSION

The Commission concludes that the Respondent properly dismissed Count A & B of the Petitioner's charge for lack of jurisdiction. Furthermore, the Commission concludes that Count C of the charge shall remain dismissed for lack of jurisdiction.

The Respondent correctly concluded that the Company was not an "employer" within the meaning of the Act at all relevant times alleged in the Petitioner's charge. In particular, as to Count B of the charge, wherein the Petitioner alleged she was unlawfully discharged on July 21, 2008 due to

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her sex, the Respondent determined it lacked jurisdiction over Count B because the Company had not employed 15 or more employees for 20 or more calendar weeks in 2008. For the same reason, the Respondent lacks jurisdiction to investigate the Petitioner's allegation in Count C, wherein the Petitioner alleged the Company discharged her on July 21, 2008, in retaliation for having opposed unlawful discrimination.

The Act creates limited exceptions to the 15-employee rule enunciated in § 2-101(B)(1)(a) of the Act. For example, in cases of sexual harassment or physical or mental disability, an entity need only employ one or more employees to qualify as an "employer" within the meaning of the Act. See 775 ILCS § 5/2-101(B)(1)(c). The Respondent did not determine that the Company fell within any exceptions to the 15-employee rule, nor was there any evidence presented to the Commission that the Company fell within any applicable exception. Therefore, because the Company is not an "employer" within the meaning of the Act, the Respondent lacks jurisdiction over all Counts A-C of the Petitioner's charge.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Mac-A-Tac, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

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Entered this 26th day of May 2010.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini